

RXC 8/1/01 13:40  
3:01-CV-01403 MARIN V. SHAW  
\*1\*  
\*CMP.\*

Mel M. Marin  
Box 1656  
New Castle, PA 16107

Plaintiff  
*Pro Se*

01 JUL 31 PM 3:30

CLERK, U.S. DISTRICT COURT,  
SOUTHERN DISTRICT OF CALIFORNIA

BY:



DEPUTY

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**'01 CV 1403 K (JAH)**

MEL M. MARIN,

Number \_\_\_\_\_

Plaintiff,

**COMPLAINT**

v.

**FOR MALPRACTICE;**

**BREACH OF FIDUCIARY DUTY**

STEPHEN SHAW;

3055 India St.

San Diego, CA 92103,

Defendant,

**JURY DEMANDED**

Comes now plaintiff on his own behalf bringing causes of action against  
defendant as follows:

**VENUE AND JURISDICTION**

1. Plaintiff is a resident and citizen and domiciliary of Pennsylvania, holds a PA driver's license, and intends to remain in PA to work and live.
2. Defendant is a San Diego resident and California citizen.
3. Plaintiff is entitled to and claims over \$300,000 from defendant.
4. Any limitations time to file this action was tolled under the Soldiers' Relief Act.

**FIRST CAUSE OF ACTION  
FOR BREACH OF FIDUCIARY DUTY**

5           5. In about March 2000 defendant met with plaintiff and plaintiff's father in La Jolla,  
6 California, for the purpose of retaining defendant to represent plaintiff and his father in an on-  
7 going action in the Superior Court.

9           6. During that meeting, plaintiff confided information to defendant that is not  
10 generally known among either the legal field in San Diego, nor the community at large, to wit:  
11 (a) the plaintiff is a reserve soldier with a record involving classified military duty which the  
12 United States has a history of refusing to confirm; (b) because the United States orders plaintiff  
13 to temporary duty in other states, if opposing counsel do not allow for extensions of time to  
14 respond to motions as is the courtesy, California judges have and will punish plaintiff for  
15 missing hearings, (c) because plaintiff's mail to different duty locations takes so long, plaintiff  
16 does not even receive mail for weeks or months after a court issues any order, so if any  
17 defendant wanted to destroy any case against plaintiff, all the defendant has to do is make any  
18 motion to shorten time to rule and the case will be over before plaintiff gets off duty and even  
19 receives his mail.  
20

22           7. At the time of the March 2000 meeting, plaintiff was threatened with or had  
23 actually been found in contempt by Judge Wickersham for plaintiff's request to extend time on  
24 a court deadline followed by plaintiff's refusal to submit his entire classified military record to  
25 Judge Wickersham. Plaintiff also had another active case, Marin v. HFC, in which the state  
26 judge was refusing additional extensions of time and needed an attorney for that one, confiding  
27 that the HFC judge may not believe plaintiff with no support from federal offices.  
28

1           8. Defendant Shaw declined to represent this plaintiff in any action, because of the  
2 inability to pay in advance any significant amount of money, because it is hard to prosecute any  
3 case missing hearings without verification from the United States, and because of Mr. Shaw's  
4 belief that it is virtually impossible to have a fair civil trial in front of Judge Wickersham and  
5 recommended that plaintiff and his father dismiss that case immediately. Plaintiff did so.  
6

7           9. However, defendant Shaw then took that same information held in confidence and  
8 used that information against plaintiff in the action Marin v. HFC to engineer the dismissal of  
9 that action against plaintiff.  
10

11          10. Specifically, defendant Shaw became counsel of record of HFC in about June  
12 2000, about which plaintiff became aware for the first time in a hearing on about July 18, 2000  
13 for leave to set a discovery motion for HFC's refusal to respond to discovery.  
14

15          11. Then, when plaintiff made a motion to that court to postpone the hearing date for  
16 the discovery motion, and to extend dates to amend his complaint because of military duty,  
17 defendant Shaw used the confidential information against plaintiff, to wit: instead of agreeing  
18 to extend time as a courtesy as is normal in the first instance with any attorney in the  
19 community, Mr. Shaw waited until plaintiff was away on his military duty, and then made  
20 motion for attorney's fees knowing plaintiff would not receive the motion because plaintiff was  
21 not at his address during duty, and also during the same duty time made a quick *ex parte*  
22 "walk-in" motion to dismiss for plaintiff's failure to appear at the hearing knowing plaintiff  
23 would not receive that motion until it was too late and knowing that plaintiff's federal military  
24 superiors would not verify the duty as plaintiff told Mr. Shaw in confidence in March 2000.  
25  
26  
27  
28

12. Because plaintiff was on active military duty and could not receive his mail and could not appear and could not respond, and because the United States refused to verify, plaintiff's case was dismissed in September 2000 and plaintiff was sanctioned in excess of \$27,000 as claimed attorneys' fees in about March 2001; and assessed an appellate charge as well.

13. During plaintiff's hearing for motion to vacate the dismissal, the judge acknowledged that the basis of the large sanctions was the confidential information that plaintiff had provided to Mr. Shaw: that the United States refused to verify plaintiff's duty.

14. The effect of that sanction is the block of a good security clearance and the prevention of plaintiff's ability to finish 20 years and reach his retirement pay valued in excess of \$100,000.

15. Mr. Shaw wilfully and deliberately used that same confidential piece of information confided to him by plaintiff, against plaintiff, to secure employment which Mr. Shaw did not have in March 2000.

16. That same piece of private information was the actual and proximate cause of the dismissal and sanction of plaintiff, which then prevents plaintiff from completing his military duty and receiving his 20 year retirement certificate and pay.

17. The time within which to file this action was and is tolled for at least 90 days, from September to December 2000 due to plaintiff's actual active military duty, pursuant to federal statute:

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court . . . by or against any person in military service . . .

50 App. USC §525.

18. Plaintiff did not at any time waive objection to Mr. Shaw's appearance in the HFC action because he notified the court of his challenge when plaintiff first learned about Mr. Shaw's representation in July 2000, and plaintiff was not allowed to set a formal hearing to remove Mr. Shaw before plaintiff left for required military duty in August 2000, when dismissal then made the motion unavailable.

19. WHEREFORE, plaintiff is entitled to and claims the value of the sanctions or approximately \$27,000, and the value of the appellate fees yet to be fully assessed, and the value of plaintiff's retirement pay of approximately \$100,000, plus the value of the HFC action of approximately \$100,000 which would not have been dismissed but for Mr. Shaw's use of the confidential information, and a punitive amount of \$100,000.

**SECOND CAUSE OF ACTION  
FOR MALPRACTICE**

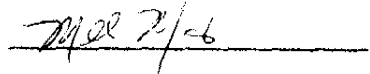
20. Plaintiff incorporates previous allegations to this cause of action.

21. Defendant Shaw made no attempt whatsoever to locate plaintiff, whose contact information defendant had, to seek approval for defendant's representation of HFC and usage of the confidential information in that case against plaintiff.

22. Defendant attorney Shaw thereby violated California Rules of Professional Conduct and committed malpractice.

23. WHEREFORE, plaintiff is entitled to damages as claimed in ¶ 19 and verifies this complaint.

DATED: July 30, 2001



Box 1656  
New Castle, PA 16107

July 30, 2001

Ms. Roberta Westdal  
Clerk of the Court  
United States District Court  
880 Front Street, Room 4290  
San Diego, CA 92101

RE: Marin v. Shaw / New Action

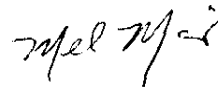
Dear Ms. Westdal:

Enclosed are three copies of my new complaint, a fee waiver request, and a cover form.

This action seeks damages against an attorney representing company HFC in an action which was in Superior Court and which I removed to this court and for which Judge Gonzalez has been assigned, Marin v. HFC, 01-CV-815.

This new action, therefore, appears to be related to the HFC action since Judge Gonzalez may have to review and rule upon the allegations of this new present action when asked to remove the HFC counsel from further representation in Marin v. HFC.

Sincerely,

A handwritten signature in black ink, appearing to read "Mel M. Marin".

Mel M. Marin

**I. (a) PLAINTIFFS**

mel Marin

(b) County of Residence of First Listed Plaintiff Lawrence  
(EXCEPT IN U.S. PLAINTIFF CASES)

**'01 CV 1403 K (JAH)**

(c) Attorney's (Firm Name, Address, and Telephone Number)

none Mel Marin  
BOX 1656  
NEW CASTLE, PA 16107

**DEFENDANTS**

Stephen S. Day  
JUL 31 PM 3:30  
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Suppa, Tricchi & Lee  
3055 India St.  
San Diego, CA 92103

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☒ DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ DEF  
Citizen of Another State ☒ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Legal malpractice 28:1332/mrv

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

# 300,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

Gonzalez

DOCKET NUMBER 01-cv-815

FOR OFFICE USE ONLY  
7/30/01

SIGNATURE OF ATTORNEY OF RECORD

Mel Marin

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44****Authority For Civil Cover Sheet**

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b.) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a) Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause.

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.